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PROCEEDINGS

OF THE

PRESENT PARLIAMENT

AS JUSTIFIED,

By the **OPINION** of the most Judicious and Learned

HUGO GROTIVS.

With Considerations thereupon.

Written for the Satisfaction of some of the *Reverend Clergy*, who yet seem to Labour under some Scruples concerning the *Original Right of Kings*, their *Abdication of Empire*, and the Peoples inalienable Right of *Resistance*, *Deposing*, and of *Disposing and Settling of the Succession to the Crown*.

By a Lover of the Peace of his **COUNTRY**.

With Allowance.

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The OPINION of the most LEARNED and JUDICIOUS

HUGO GROTIUS, &c.

THere are some, I do observe, amongst the Clergy of the Church of England, who seem very much concerned for the late King's Interest, and dissatisfied with the Management and Disposal of Affairs relating thereto, by this Great and Honourable Convention of the Lords and Commons now assembled in Parliament. All who cherish Resentments of this kind dare not indistinguishably condemn, because they may possibly be directed in some by a principle of Honor and Honesty? But those whose intentions are honest, and do not principally design thereby to betray their Countrey into Popery and Vassalage (for such will be the natural consequences, tho not the inducements to their Wishes) I desire they would seriously weigh this Right they so much contend for, in the ballance of Law and Reason, before they pass a Censure, or ground an Opinion.

There can be no *Right* pretended either to *Property* or *Dominion*, but by the *Laws of Nature*, *Nations*, or the *Municipal Laws of the Country*, where such Right is claimed, & altho the latter of these are grounded upon and derived from the two former, yet do they notwithstanding take place in the deciding of all Difficulties, so far as their Statutes or Presidents do extend: But where the *Municipal Laws* are silent or defective, there Recourse is to be had to the *Laws of Nature* and *Nations*. Upon this account it was, that the Grave and Learned Serjeant *Maynard*, being applyed unto, as the fittest person, in respect of his great Age and Learning, to signify what the *Laws of the Land* did direct in such an Exigence as this, replied, *That it was true, he was the most ancient of all those who attended that profession, that he had outlived several Kings, and several Sets of Judges, but now he had also outlived the Law itself.* Intimating thereby, that the case was so unusual and extraordinary, that it went beyond the Direction of the *Municipal Laws*, and therefore must appeal to a more remote Tribunal.

The Reason why I do more particularly single out the Opinions of this famous *Civilian* upon this Occasion, is because of the great Credit and Authority he has obtained in the World, especially amongst the Clergy, and is above all other of his Faculty, most tender of the *Rights* and *Prerogatives of Crowned Heads*. Upon this account there can nothing

reasonably be objected to his sense of those Scruples and Difficulties which some at present labour under. Therefore I desire they would hear him in his own Words, with the most fair and genuine Translation they will admit.

Grot. de Jure Belli & Pacis, Lib. 1 Cap. 4. Sect. 16.

Si Bello injusto & cui juris Gentium requisita non adsunt, Imperium arripuerit aliquis, neque pactio ulla secuta sit aut fides illi data, sed sola vi retineatur possessio: videtur manere belli jus, ac proinde in eum licere quæ in hostem licet, qui, à quolibet etiam privato, jure potest interfici. In reos Majestatis, inquit Tertullianus, & publicos hostes omnis homo miles est.

If any one by an unjust War, such as wants these Requisites which by the Laws of Nations it ought to have, does usurp a Government, nor afterwards enters into any Compact with the People, nor is there any Trust reposed in him, but his possession is maintained by Force; the right of War does in this case still continue, wherefore it is lawful to deal with him in all things

as with an Enemy, for he may be justly slain by any private person, Tertullian tells us, That against those who are guilty of usurping Majesty, and against common Enemies, every one is a Souldier.

I know but of three wayes whereby Empire can be originally acquired. The first is by Nature, and the Governor a Patriarch who immediately presides over a Family or City of his own natural Generations, or claims the Government by a Lineal Descent from him who was the common natural Ancestor of all his Subjects. To this Title I think there is no Prince now in the World lays claim: if there be, let him produce his Pedegree, and prove himself the Primogenitus by an Hereditary Line from the natural Father of the People, and I will not farther contend it with him.

The second sort of Empire is by Conquest, of which you see what Grotius says. But put the case the Conqueror had a Right prior to his Conquest, so that the War cannot be called unjust, yet after he has acquired the Government, he cannot at once be in, by two Titles, so as to exercise the respective powers given by both; because if he holds by Conquest his power is Absolute; if by Contract, then limited and directed by the People; and he cannot be both absolute and limited at the same time. From hence it must necessary follow, that every Act wherein he transgresses his limited power, in usurping what he had no manner of Right to, he renounces his lawful Title, and Rules by Force and Violence only, and thereby the Conquerors unjust War, and the Peoples just Right to vindicate themselves from this unjust usurpation, is still continued.

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As the case stands with Us in *England*, if the late King could have claimed by Conquest, as many have pretended he might, from *William* the Conqueror, only to palliate some illegal proceedings, what has been done against him, and much more, in the Opinion of this learned Man, had been both lawful and justifiable. But if he claims neither as a Patriarch, nor by Conquest, then there is only left for him to claim by *Compact*, under which Qualification I desire you would farther consider him by the Rules which our Learned Author layes down.

Grot. de Jure Belli, Lib. 2. Ca. 14. Sect. 4.

Promissæ quoque plena & absoluta atque acceptata, naturaliter jus transferre, demonstratum supra est, quod iidem ad Reges, non minus quam ad alios pertinet, ita ut improbanda sit, hoc quidem sensu, eorum sententia, qui negant Regem teneri unquam his quæ sine causa promissit.

That promises fully made and accepted do naturally transfer a Right, is already shewn. Now this holds as well in Kings as in private Men: their Opinions therefore are not to be allowed of, who hold, that wert a King promises without a good cause, is not obligatory.

Contrary to this fundamental *Law of Nature* and *Reason*, is the Opinion of those Divines, who hold all Kings to be *Jure Divino*, and consequently their power absolute; so also of these common *Lawyers* who would justify that all *Concessions* made by the Prince to his People, in diminution of his *Prerogative Royal*, (tho' dangerous and destructive) are void and revokeable.

Ibid. Lib. 1. Ca. 4. Sect. 7. N. 3.

Notandum est, primo homines non Dei precepto sed sponte adductos, experimento infirmitatis familiarum segregum adversus violentiam, in societatem civilem coisse, unde Ortum habet Potestas Civilis, quam ideo Humanam Ordinationem Petrus vocat, quamquam alibi & Divina Ordinatio vocatur; quia hominum salubre institutum Deus probavit. Deus autem humanam legem probans, censetur probare ut humanam & humano more.

for the good of Mankind; but when *GOD* approves of an *Humane Law*, he must be supposed to do it as *humane*, and after an *humane manner*.

'Tis to be observed, That Men did not Originally unite into civil *Communities* by any Command from *GOD*, but voluntarily, & from the experience they had that separate Families were alone unable to resist any Forraign Force. From hence grew *Civil Power*, which Peter therefore calls an *Humane Ordinance*, tho' elsewhere it is called a *Divine Ordinance*, because *GOD* did approve thereof as suitable and convenient

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In this Paragraph our Author traces a lawful Empire to its originals : he finds it then to reside in the People, and derives it, together with the reasons thereof, from *Them*, to such Person or Persons it whom it is by their Act and Sanction plac'd and confirm'd.

Ib. Lib. 1. Cap. 4. Sect. 7. N. 2.

Ferri enim leges ab hominibus solent & debent cum sensu humane imbecillitatis. Hec autem Lex de qua agimus, pendere videtur à voluntate eorum qui se primum in societatem civilem consociant, à quibus jus porro ad imperantes manat. Hi vero si interrogarentur, an velint omnibus hoc onus imponere, ut mori præoptent, quam ullo casu vim superiorum armis arcere, nescio an velle se sint responsuri, nisi forte cum hoc additamento, si resisti nequeat, nisi cum maxima, Reipublicæ perturbatione aut exitio plurimorum innocentium, quod enim tali circumstantia caritas commendaret, id in legem quoque humanam deduci posse non dubito.

All Laws and Governments always are and ought to be established by the first *Legislators* with respect to *Human frailty*. The Law we treat of (*viz.* of *Resistance* in cases of inevitable necessity) seems to depend upon the intention of those who first entered into the *Civil Society*, from whom the Right of Governing is transferred to the Governor. If such were asked, whether they intended to impose a yoke equal to Death it self upon all who should offer to resist the Tyrannies of a superior Magistrate by force, upon any account whatsoever; I much doubt, whether they would declare themselves in

the *Affirmative*, unless perhaps to avoid the inconveniencies which might attend such a Storm in the State, and the destruction of many Innocents: for what in this case *Charity* would oblige, may be received as a Law.

Here our Author gives another touch at the *Original of Empire*, and in effect tells us, that as it first was in the power of the People to make *Laws of Government*, so it is absurd to think, that they should not by those Laws secure themselves against the Passions & Infirmities of the Governor, which they then made, that thereby they might be justifiable in re-assuming their *Native Liberty*, so far as to repel by force the Violence he should offer either to the selves or their Laws. To this effect, and more closely, does *Vasquis* Write, *Lib: 11. cont. Illust. cap: 82. N: 3. Semper licet subditis si possint, in libertatem eam, scilicet quæ populi est, se vindicare: Quia quod vi parium est imperium vi possit dissolvi; quod autem ex voluntate sit profectum, in eo pœnitere liceat & mutare voluntatem.*

Grot.

Si Rex partem habet summi imperii, partem alteram populus aut Senatus, Regi in partem non suam involanti, vis justa opponi potest; quia eatenus Imperium non habet: Quod locum habere censeo etiamsi dictum sit, Belli potestatem penes Regem fore, id enim de bello externo intelligendum est: cum alioqui, quisquis Imperii summi partem habeat, non possit non jus habere eam partem tuendi. Quod ubi sit, potest etiam Rex sui imperii partem, Belli jure ommittere.

If the Supreme Power be divided between the King and the People, he may justly be resisted by Force if he invade that part which is not his own, because his Power extended not to it. This I conceive must be allow'd, though the King have the Power of Peace and War; for this is to be understood of Foreign War. Whosoever hath any part of the Supreme Power, must also necessarily have a Right to defend it: and where the Government is so constituted, the King himself may justly, by the Right of War, lose even his own part of the Empire.

This is plainly the Case of England, where the Supreme Power is divided between the King, Lords, and Commons, and where the King in his greatest Magnitude is always acknowledged to be *Minor Universit.* It is evident then, That if either of these three do break in upon the Rights and Privileges of either of the other two, Force is justifiable to repel this Invasion: as for instance, If any new Precept, Ordinance or Command should be introduced as an obligatory Law; or if any Law formerly made should be repeal'd or dispenc'd with, which in effect are both the same, by any one of these three Estates, without the Concurrence of the other two in Parliament; this is such an Invasion as Grotius here speaks of, because this Power of making and repealing a Law is jointly in the King and People, but in neither of them separately. Now whether the erecting of an High Commission Court directly contrary to an Act of Parliament, be not a virtual repealing of that Act; Whether the dispensing with several other Statutes be not equivalent with the assuming of a Power to abrogate them; Whether the establishing a standing Army in time of Peace be not a virtual Introduction of a new Law in it self, and a Repeal of all the old ones in its Consequences; and whether all these be not such an Invasion of that part of the Government which belongs to the People as will justify Resistance, let the World judge

judge: If so, the Legality then of all that has been done, or is farther likely to be done against such an Invader, will easily appear. *Theodosius* the Emperor often used this excellent Expression, *Tantum mihi licet quantum per leges licet*, and *St. Paul* acquaints us with the Conditions of our Submission not for Wrath but Conscience sake, knowing that he is the Minister of GOD for our Good. Nor indeed does it seem Christian or reasonable, to impose Obedience farther than it shall appear to be for the general Good of the People, for whose Sate-guard and Protection, not their Ruine and Destruction, Government, nay Religion it self, was first instituted. *Unicus imperii finis est populi utilitas*, saith *Junius Brutus*; and I cannot but concur with this fundamental Maxim, *Salus populi est suprema Lex*.

Grot. de Jure Belli, Lib. 1. Cap. 4. Sect. 10.

Si tamen Rex reipsâ etiam tradere Regnum aut subicere molietur, quin ei resisti in hoc possit non dubito. Aliud est enim ut diximus imperium: aliud habendi modus, qui ne mutetur obstat potest populus: id enim sub imperio comprehensum non est: Quod non male aptes illud Senecæ in re non dissimili, Et si parendum in omnibus Patri, in eo non parendum, quo efficitur ne Pater sit.

If a King shall endeavour to give up, or subject his Kingdom to another, I doubt not but he may be resisted; for Empire is one thing, and the manner of holding it another, the Alteration whereof the People may hinder, for that is not comprehended under the Notion of Empire it self. To this may that Saying of *Seneca* be well applyed, being in effect the same case, *Although an universal Obedience is required to Parents, yet not in those things wherein they case to act like Parents.*

What Designs have been carried on to alter the Government by subverting the fundamental Lawsthereof, and by private Leagues and Combinations with a neighbouring Prince, to subject the Kingdom to his Power by admitting of a Forraign Army into it, Is in part evident by the French King's Testimony, and in convenient time will farther appear, to add to those many other weighty Inducements which the People had, to proceed by such Measures as the Wisdom of the Nation has thought fit.

Grot. de Jure Belli, Lib. 1: Cap: 4: Sect: 9:

Si Rex aut alius quis imperium abdicavit aut manifeste

If a King or any other Superior Magistrate shall abdicate or manifestly desert the Go.

habet pro derelicto, in eum post id tempus omnia licent quæ in privatum sed minime pro derelicto habere rem censendus est quem tractat negligentius.

The Word **ABDICATE** in its proper Sense, is used to signifie, when a superior Magistrate does renounce and utterly withdraw himself from the Government, or from that share of it which he holds. This may be done voluntarily and designedly, by transferring the Government to another by some formal method of Conveyance, as *Charles the Fifth* did to his Son, being himself inclined to become a Recluse or else there may be an involuntary and undesigned *Abdication*, as when an *Office*, and the executing of the same, does determine by *Misfeasance*, or *Nonfeasance*. The Word **DESERT** implies only a *Nonfeasance*, and must naturally amount in all Ministerial Offices (that of a King, who hath only the Executive Power, being no other) to an end and determination of the same, and thereby does vest again in Him or them who first created or instituted the Office, an immediate power to erect and institute a new one, together with such an *Officer* as they shall approve of to execute it, with such Restrictions and Limitations as they shall think expedient. How far this poor Government has been *abdicated, denounced, deserted* and forsaken by *Malefeasance, Misfeasance, Nonfeasance*. & at last by an utter *Dereliction*, I need not repeat, it being too evident to all, but *those who will not see*, than whom there is none so blind & incorrigibly ignorant.

Primum ergo, qui Principes sub Populo sunt, sive ab initio talem acceperunt potestatem, sive postea ita convenit ut Lacedæmone, si peccent in Lege & Rempublicam non tantum vi repelli possunt, sed si opus sit puniri morte, quod Pausania Regi Lacedæmoniorum contigit.

Grot. de Jure Belli, Lib. 1. C. 4. Sect 8.

How sacred the person of a King is, I cannot determine; but to his Office, as to all things that are for universal good, whilst executed in order to that end, I will allow a Character of Sanctity. Some Kings, such as were by God's immediat appointment, are stiled, *His anointed*, and were handed to his People with a particular command to be tender of their persons, but this must be understood of such only, who are al-

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so Nursing Fathers to their People; for of others of a different stamp, the Scripture speaks but with a slender respect, when it says, *I have given you a King in my wrath.* In *Deut.* we find the People left to chuse a King from among their Brethren, and *Moses* elsewhere prescribing Laws to him. *David* makes a League with the People at *Hebron*, which was doubtless that original Contract, according to which he was to go in and out betwixt them. It was a noble expression of the Emperor *Trajan*, when he delivered a Sword to a Captain of the Pictorian Band, and said, *Hoc promittere si recte impero, si male contra me:* but it is not upon every small occasion, that Kings may be bound in fetters, or that *Trajan's* Sword should be inverted to his own Breast. A King's Office is sacred, and so is his Right also, which, while it keeps within its due limits, ought not to be invaded. The Laws of God do in positive Terms command Honor and Obedience as well as Tribute to be paid to him, with which the Municipal Laws of this Kingdom do equally conspire in favor of his Dignity and Person. But Divine as well as Humane Laws, tho' they sound absolutely, yet refuse not upon extraordinary Exigencies, to submit to implied Exceptions. Upon this account, the Jewish Doctors in case of their Sabbath, which of all things was esteemed most sacred amongst them, and the Laws for the observance of it most strict and absolute, yet they held that *Periculum anime impellit Sabbathum*, and for the same reason Christ himself justifies the breach of Sabbath, and eating of the Shew Bread, in cases of extreme necessity; so likewise must the danger be imminent, & the necessity very urgent, that can any ways excuse so much as an irreverend thought of Majesty: Yet, as the great Law of necessity is superior to all others, so will it sometimes justify such Acts as are against all Laws of an inferior Order. In such cases the People are, must and will be Absolute and Arbitrary, and therefore, they cannot by any Contract or Promise either with Prince or Peasant, renounce and abdicate this great Law of Self preservation, in affirmation of which great truth, *Joannes Major* in lib. 4. *Sententiarum.* thus expresses himself, *Non possit populum a se abdicare potestatem constituendi Principis in casu quo ad destructionem vergeret.* But how far the present Exigence may justify the act of the People in altering of the Succession where the Monarchy is hereditary, and the Heir may plead his Innocence, the following Authorities will resolve.

Grot. De Jure Belli, Lib. 2. cap. 4. Sect. 10. N. 2.

*Sciendum est, ejus qui non-
dum natus est nullum esse jus,
sicut nec nulla sunt accidentia
rei non existentis. Quare, si po-*

We must know, that no Right can be-
long to him who is yet unborn, as that
which hath no existence can have no acci-
dents

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patris à cuius voluntate jus regnandi proficiscitur voluntatem mutet, iis qui nondum nati sunt ut quibus jus quæsitum nondum est, nullam facit injuriam. Sicut autem populus expresse mutare voluntatem potest, ita & tacite credi mutasse. Mutata igitur populi voluntate, neque dum existentia eorum iure qui expectare possunt, parentibus autem & quibus nasci possunt, qui ius suo tempore essent habituri, id ipsum jus dereliquissent, nihil est quod obstat quo minus illud ut derelictum, ab alio occupari possit.

This point of *Succession*, upon supposition that the pretended Prince of *Wales* was really born of the Queen, requires a decision, for it happening before any alteration actually made in the Government, leaves the point to turn upon the *Change of the peoples will*. Our Author here takes notice, of an *express* and a *tacit Change*; That the People did in a publick formal Manner change their will as to the *succession, before the Birth of this Child*, I cannot say; but it is certain, that they did generally shew their aversions to such a Succession, long before this Birth; and would undoubtedly have done it in a more publick Legal Method, had they not been awed by an illegal standing Army. As to a *tacit Change of their Will* none can doubt, but it had a full Existence before the young Prince had his, bearing date from that day, wherein publick Prayers and Thanks were by Order, offered up for the Queens pretended Conception, and may by this Parliament, be accordingly so declared.

Grot. De Jure Belli, Lib. 2. cap. 7. Sect. 26.

Similis est questio, an abdicari possit Regnum, aut jus succedendi in Regnum: & quin pro se quisque abdicare possit non est dubium: an & pro liberis, magis controversum.

lib. Illud interest inter Natos & Nascituros, quod Nascituris

dependet. Wherefore, if the People, from whose Will all Right of Sovereignty did originally proceed, should happen to change their Will, yet cannot they be supposed thereby, to injure them who have yet acquired no Right. And as the people may be believed to change their Will by exprets words, so they may tacitly likewise: allowing then, that the people have changed their will, & that such future Rights have no real existence in those who are only in expectancy; but that the Parents from whom they may be born, having in them this Right, did relinquish the same, what should hinder but that which is thus dereliquished may be possessed by another.

It is such another Question, Whether a King can so *abdicate* his Kingdoms as to destroy the Right of *Succession* to his Son. That he may *abdicate* for himself is not doubted; but whether for his Children also, is the Question.

The diversity depends upon the Children.

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*inondum questum sit jus, atque
 Ideo, auferri iis possit populi vo-
 untate, si etiam parentes, quorum
 interest jus ad filios transire, jus il-
 lud remiserint: quo pertinent ea
 que de reliquione supra diximus.*

drens being born *before* or *after* the Re-
 nunciation, for these who are yet un-
 born, the People may deprive of this
 Right, because it is not yet accrued, if
 the Parents, whose Interest it is that such
 Right should descend to the Children,
 do also remit it. To the same purpose

is what has been said concerning *Abdication*.

Our Author does here again affirm a *Change of Succession* to be lawful, upon
 the *Change of the peoples inclination*. But he is also farther of Opinion, that
 King may *Abdicate* for a Child unborn as well as for himself. It is al-
 ready sufficiently proved by the Authority of this Author, and others,
 That a Breach of the Office and Duty of a King is an *Abdication ipso facto*,
 and if so, that of K: James II. may bear date from the day he first ex-
 cited the Court of Ecclesiastical Commissioners; established a standing Army
 the Nation, or took those Customs, the Grant whereof expired by K: Char.
 II. Death, and ought not to commence again till given by another Par-
 liament. This was done in the very Infancy of his Reign, whereby his
Abdication became an early Act, and did betimes cut off both such real
 and supposititious Issue, as might after-pretend by Birth and Title to
 bring in Popery and Slavery into this Nation.

Grot. De Jure Belli, Lib: 2: cap: 7: Sect. 27. N: 2.

*Si de primævâ populi volunta-
 te (in Successione controver-
 tendâ dictum) questio incidat;
 non abs re erit, populum qui nunc
 est, quique idem cum eo qui olim
 fuit censetur, suum super ea re sen-
 sum exprimere; qui sequendus eret,
 nisi satis certo constet, olim aliam
 fuisse populi voluntatem, & ex eâ
 jus questum.*

If (in discussing of a Right of Succession)
 any doubt does arise, it would be conve-
 nient that the People who now are, and may
 be supposed to be of the same mind with their
 first Ancestors, should express the sense of
 the matter; which ought to be pursued,
 unless it be manifest, That the Original
 Will of the People was otherwise, and
 from thence a Right was established.

Our Author, in his own Annotations upon this Paragraph, farther adds, that such disquisi-
 tion may be made by Convention of the States, (viz. The Lords and Commons) as it was in England
 in the year 1571 & 72. according to Camden. In the two former Paragraphs he puts cases about
 the changes of a Succession, and resolves them; but by this and by his Annotations thereupon;
 when any other doubts shall arise concerning Succession, he leaves them to the Decision of the
 People, and particularly to the States of England by express Name, as if they were more un-
 doubted Judges in such Controversies than the States of any other Nation: and they, according
 to this learned Author's Opinion, have regularly and justly proceeded to assert their own
 Rights; and to settle both them and the Succession of the Crown, for the future, upon such an
 Establishment, that we may reasonably hope and believe, that all the Powers of France, or
 Prayers of Rome, no nor the very Gates of Hell, shall ever be able to prevail against them.

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